IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6201 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

G S R T C

Versus

D U PATEL

Appearance:

Ms.Krina Thakker, for MR YOGESH S LAKHANI,
for the Petitioner.

MR BG JANI for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 05/07/2002

ORAL JUDGEMENT

The petitioner-Corporation has challenged the Award passed by the Industrial Tribunal, Vadodara, dated 15.1.1992 passed in Reference (IT) No.268 of 1984.

The concerned workman was serving at he relevant time as a Conductor at Bharuch Depot. He was subjected to departmental proceedings on the allegations that while he was on duty on Bharuch-Dahej route, on the relevant day, he had not issued tickets to various passengers, even though he had collected the fare. The said facts are narrated by the Tribunal in paragraph 3 of the Award. Ultimately, after conclusion of the said enquiry, he was dismissed from service by an order dated 1.7.1980. The first Appellate Authority also dismissed his appeal. However, he carried the matter before the second Appellate Authority of the Corporation. The Second Appellate Authority took a lenient view of the matter and reduced the penalty by reinstating him back in service at the minimum scale prescribed for the Conductor. It is required to be noted that the said workman accepted the aforesaid penalty and, ultimately, he was reinstated in service in March, 1981 and, thereafter, he decided to challenge the aforesaid penalty by raising an Industrial Dispute and, ultimately, in the year 1981, the dispute was referred to the Industrial Tribunal, Vadodara, and the same was ultimately numbered as Reference (IT) No.268 of 1984. It is required to be noted that, after having accepted the aforesaid modified punishment order, the respondent workman, subsequently raised the said industrial Dispute, and the Industrial Tribunal, ultimately, by its order dated 15.1.1992, interfered with the penalty order passed by the second appellate authority of the S.T. Corporation and set aside the order of penalty by the impugned order. The aforesaid order is under challenge at the instance of the S.T. Corporation.

At the time of hearing, it is argued by Ms.Krina Thakker, learned Advocate for the petitioner, that the respondent-workman had committed a serous misconduct by not issuing tickets to the passengers in the bus. She further submitted that looking to the serious misconduct committed by the workman, he was rightly dismissed from service by the Disciplinary Authority, but, ultimately, the appellate authority took a lenient view of the matter and after substituting the original penalty, he was reinstated in service to his original post; yet, he raised the aforesaid industrial dispute and in spite of the said fact that even though a serious misconduct was proved against the concerned workman and even though the appellate authority itself has taken a lenient view of the matter, by not taking away the employment of the Conductor, the Tribunal interfered with the said order and passed the impugned order. She, therefore, submitted that the Tribunal has committed a serious error of law

and exceeded its jurisdiction while passing the impugned order.

On behalf of the workman, Mr.Jani, learned Advocate, supported the Award of the Tribunal.

After considering the arguments of both the sides, I am of the opinion that, unfortunately, the Tribunal has taken a very casual view of the matter. It is required to be noted that the respondent had not issued tickets to various passengers in the bus and as a conductor, it was his duty to see that tickets were required to be issued to the passengers positively. It is not in dispute that the enquiry was held properly and appropriate opportunity was given to him by the Disciplinary Authority to defend his case. The respondent-workman had not challenged the legality of the departmental proceedings. Simply because relevant papers were not produced, the Tribunal has reached the conclusion that the order of penalty is required to be set aside. The Tribunal has completely lost sight of the fact that even the appellate authority itself has discussed the matter and reduced the penalty. The order of the Tribunal is, therefore, highly unsatisfactory and it is difficult to uphold the same. Even Mr.Jani, learned Advocate for the respondent, is also not in a position to support the finding given by the Tribunal in its order. Even the request made on behalf of the S.T. Corporation that in case it is found that the enquiry is found to be defective, opportunity may be given to the Department to lead evidence, has also not been considered by the Tribunal. It is required to be noted that the employee has never challenged the finding of the Enquiry Officer. Not only that, the legality of the enquiry is already accepted by the concerned workman. The order of the Tribunal, therefore, suffers from non-application of mind. Even as regards penalty, in my view, the penalty imposed by the second appellate authority is also very lenient, because when the conductor is found to have committed a serious misconduct, no other punishment except dismissed could have been passed by the second appellate authority. In any case, since the Department itself has taken the view to reinstate him, at least the Tribunal was not required to interfere with the aforesaid order.

On all the aforesaid grounds, the Award of the Tribunal is quashed and set aside and Reference (IT) No.268 of 1984 stands rejected and the order of the second appellate authority will be revived.

The petition is accordingly allowed. Rule is made absolute accordingly, with no order as to costs.

5th July, 2002 (P.B. Majmudar, J.)

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(apj)